

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Assessment and Collection)	MD Docket No. 03-83
of Regulatory Fees for)	
Fiscal Year 2003)	

COMMENTS OF VERIZON¹

Introduction

The Commission should not grant waivers of regulatory and application fees just because a company has filed for bankruptcy or receivership. The Commission may waive regulatory and application fees *only* “for good cause shown” and “where such action would promote the public interest.” 47 U.S.C. § 159(d) (allowing waiver of regulatory fees); *see also* 47 U.S.C. § 158(d)(2) (waiver authority for application fees). Giving bankrupt and financially troubled companies a free pass on paying fees generally undermines, rather than promotes, the public interest by imposing the costs of these companies’ failures on others in the telecommunications industry. Moreover, in the case of bankruptcy, such waivers are not necessary because bankruptcy law already balances the priority of these fees against the debtors’ other obligations. And waivers based on Chapter 11 bankruptcy filings are particularly inappropriate, because when the company intends to reorganize and operate as a going concern, there is no policy justification for allowing the company to avoid the legitimate costs of future business, including payment of regulatory fees.

¹ The Verizon telephone companies (“Verizon”) are the local exchange carriers affiliated with Verizon Communications Inc., listed in Attachment A.

For waivers due to reasons other than bankruptcy, the Commission should set a reasonable cap, of \$500,000 or \$1,000,000, on the aggregate amount of fees that it will waive for an entity and its affiliates. *See* NPRM ¶ 12.

I. THE COMMISSION SHOULD NOT GRANT WAIVERS OF FEES TO A COMPANY JUST BECAUSE IT HAS FILED FOR BANKRUPTCY OR RECEIVERSHIP

The Commission has previously stated that it will “grant waivers of the fees on a sufficient showing of financial hardship,” and that “[e]vidence of bankruptcy or receivership is sufficient to establish financial hardship.” NPRM ¶ 10. As the NPRM clarifies, the Commission currently will consider fee waivers based on bankruptcy or financial distress on a case-by-case basis. NPRM ¶ 11. The Commission should revise its policy and declare that it will *not* grant waivers of regulatory and application fees based solely on a company’s bankruptcy or receivership status.

As many analysts have recognized, the alarming number of telecommunications bankruptcies in recent years already imposes significant costs on others in the industry. As an initial matter, many telecommunications companies are also vendors of the bankrupt companies, and have been forced to write off as uncollectible hundreds of millions of dollars in debt owed to them by those filing for bankruptcy. Allowing these bankrupt companies *additionally* to avoid paying Commission fees would permit them to further profit from their failures (and, in the case of WorldCom, their outright fraud), at the expense of the rest of the industry. Fee waivers for these companies would result in either the Commission having fewer resources, or in other industry players paying increased fees to make up the shortfall.

And if the Commission waived fees for bankrupt and financially distressed companies, the shortfall likely would be significant. Based on a quick analysis of publicly available data, Verizon conservatively estimates that roughly 30% of the revenues of the larger interexchange carriers, and almost one-fifth of total larger company interstate revenues, were for companies that filed for bankruptcy.² Because regulatory fees for interstate telecommunications providers are allocated proportionally based on revenues, *see* NPRM ¶ 2, if the Commission were to allow these companies to waive all regulatory fees, one could expect that a significant portion of those fees would either go unpaid or would have to be imposed on the remaining industry players.

Moreover, the fact is that such companies often have sufficient resources available to pay regulatory and administrative fees. For example, WorldCom recently posted a profit, and is expecting to emerge from bankruptcy with approximately \$3 billion in available cash, and stocks and bonds with a market value of roughly \$12 billion.³ Indeed, the same month that WorldCom filed papers with the Commission asking a waiver of roughly \$92 thousand in application fees due to its “financially

² The figures are based on a comparison of publicly reported bankruptcies for companies listed in the Commission’s 2001-2002 Report on Statistics of Communications Carriers, Table 1.2. These estimates likely understate the bankruptcy problem because (1) the Commission report does not include figures on CLECs, which account for a large part of telecommunications bankruptcies, and (2) Verizon has tracked only those bankruptcies that potentially affect Verizon companies, not all bankruptcies in the industry.

³ *See* “WorldCom January 2003 Monthly Operating Results Show Company Profitable,” MCI website, *available at* <http://www.mci.com/news/index.jsp>; Barbara Powell, “WorldCom Files Reorganization Plan,” Associated Press (April 14, 2003), *available at* <http://www.startribune.com/stories/789/3825590.html>.

distressed” position, it reported \$2.4 billion in operating revenues, and \$207 million in net income for that month alone.⁴

Especially in the case of companies that are filing for Chapter 11 reorganization, such as WorldCom, there simply is no justification for fee waiver. The purpose of Chapter 11 is to allow the company to reorganize and remain in business as a going concern. In such a case, while bankruptcy law anticipates relief from some pre-petition debt, it requires the company to pay the going-forward costs of business as they become due. *See* section II, *infra*. These costs include the regulatory fees associated with continuing business.

In addition, because the financially-troubled companies that emerge from Chapter 11 bankruptcy will operate on a clean slate, keeping all of their assets but little of their debt, they will enjoy an artificial competitive advantage over those industry players that have not filed for bankruptcy. In the case of WorldCom, for example, the company has filed a reorganization plan that, if accepted by the bankruptcy court, would free it from approximately \$36 billion in debt. *Id.* As one commenter earlier put it, “There’s little doubt that WorldCom will emerge from bankruptcy financially stronger than its less criminally inclined competitors, who remain saddled with huge debt.”⁵ The Commission

⁴ See Letter from Dennis W. Guard, Associate Counsel, WorldCom, to Andrew S. Fishel, Managing Director, FCC (Aug. 13, 2002) (requesting waiver); Letter from Mark Reger, Chief Financial Officer, FCC, to Dennis W. Guard, Associate Counsel, WorldCom (November 27, 2002) (waiving \$92,090 in fees); *In re WorldCom, Inc.*, Amended Monthly Operating Report for the Period From August 1, 2002 to August 31, 2002, available at http://global.mci.com/news/infodesk/forward/operating_reports/.

⁵ Russ Mitchell, “It’s Just Not Fair,” SmartMoney.com (Oct. 10, 2002), available at <http://www.smartmoney.com/techwise/>. See also “Brave New World For WorldCom?,” CBSNews.com (Apr. 14, 2003), available at <http://www.cbsnews.com/stories/2003/04/16/national/main549667.shtml> (“Telecommunications industry analysts say the smaller debt load – between \$3.5 billion and \$4.5 billion – could give WorldCom

should not adopt a fee waiver policy that would further reward these companies at the expense of the rest of the industry.

II. THE BANKRUPTCY CODE, RATHER THAN COMMISSION WAIVERS, SHOULD DETERMINE THE PORTION OF FEES THAT WILL BE REDUCED DUE TO FINANCIAL HARDSHIP

A policy of *no* fee waiver based on financial hardship is particularly appropriate for companies that are in bankruptcy, for at least two reasons. First, if the request for waiver is based purely on financial hardship, bankruptcy law – rather than Commission policy – should determine what portion of regulatory and administrative fees should be paid by a bankrupt company. The Commission has already recognized this, by suggesting that payment of any fees above a capped amount should be set by bankruptcy law: “By leaving the ultimate disposition of these large fees to bankruptcy law, rather than waiving them, we believe that we would be giving appropriate weight to our congressionally-mandated obligation to collect regulatory and other fees. Moreover, we believe that we would also be giving due regard to our practice, approved by the courts, of reconciling our regulatory responsibilities with the goals of the Bankruptcy Act.” NPRM ¶ 12 (footnote and citations omitted). The Commission’s logic regarding fees paid by a bankrupt entities applies equally to *all* fees, not just those above a capped amount.

Second, waiving fees to bankrupt companies would over-discount these debts beyond the balance set forth in the Bankruptcy Code. Even without fee waiver by the Commission, any outstanding pre-petition fees will be accorded a junior priority in the

an advantage over competitors like AT&T Corp. because it still has its vast communications network but not the \$41 billion in debt it had when it filed for bankruptcy in July”).

bankruptcy case. Like other general, pre-petition claims of unsecured creditors, these fees likely will be discharged for only pennies on the dollar. *See* 11 U.S.C. § 726(a)(2). Thus, any Commission waiver of fees may well result in a *double* discount of the fee amount – once by the Commission and once by the priorities set by bankruptcy law. *See* NPRM ¶ 12 (“Fees owed above this cap would, of course, be subject to the provisions of the Bankruptcy Act . . . and the disposition of the relevant bankruptcy court”). For post-petition debt, companies emerging from Chapter 11 bankruptcies are required to pay in full for any expenses incurred after the filing, and Congress has given such expenses a priority in a bankruptcy case. *See* 11 U.S.C. §§ 503, 507(a). In these cases, a Commission fee waiver would allow a company to not only discharge *past* debt, but would allow it to evade payment of post-filing fees that bankruptcy law would require it to pay. To the extent the Commission directs others in the industry to make up the shortfall for these waived fees, the Commission would be requiring the company’s competitors to subsidize its continued cost of doing business. Granting a waiver in such circumstances would violate the public interest, not further it.

III. THE COMMISSION SHOULD ADOPT A GENERAL CAP ON FEE WAIVERS

The Commission has asked for comments on whether it should impose a cap on the amount of fees that it will generally waive. NPRM ¶ 12. As a matter of general policy, the Commission should set a cap on the maximum amount of fees that will be waived for any entity and its affiliates. A cap of \$500,000 to \$1,000,000, as suggested by the Commission, would be appropriate. In such a case, requiring a company to pay any fees in excess of the capped amount would minimize the negative impact a larger waiver could have on Commission resources. To ensure that the cap is not subject to loopholes,

the Commission should clarify that the cap applies to the aggregate total amount of fees that will be waived for a company and its affiliates. And, as stated in section II above, it should clarify that it will not waive *any* fees based on financial hardship for a company that is in bankruptcy.

Conclusion

The Commission should not grant fee waivers to companies just because they have filed for bankruptcy or receivership. In other cases, it should cap the amount of fee waivers at a maximum of \$500,000 or \$1,000,000.

Respectfully submitted,

A handwritten signature in cursive script, reading "A Rakestraw", written over a horizontal line.

Ann H. Rakestraw

Michael E. Glover
Edward Shakin
Of Counsel

1515 North Courthouse Road
Suite 500
Arlington, VA 22201
(703) 351-3174

April 25, 2003

Attorney for the
Verizon telephone companies

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a Verizon Mid-States
GTE Midwest Incorporated d/b/a Verizon Midwest
GTE Southwest Incorporated d/b/a Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.